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In re Application of
PETER KENINGTON
Serial No.: 09/743,003
PCT No.: PCT/GB99/02110
Int. Filing Date: 02 July 1999
Priority Date: 02 July 1998
Atty. Docket No.: 46309-251562
For: A PREDISTORTER

DECISION ON
PETITION
UNDER 37 CFR 1.181

This is a decision on applicant's "Petition to Withdraw Abandonment" filed 25 July 2003 requesting withdrawal of abandonment of the above referenced application, on the basis that the 23 February 2001 Notification of Missing Requirements was never received. The petition is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 29 December 2000, applicants filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee.

On 23 February 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in accordance with 37 CFR 1.497.

On 25 July 2003, applicant filed a petition requesting that the abandonment of application be withdrawn on the basis that the 23 February 2003 Notification of Missing Requirements was never received.

DISCUSSION

To withdraw the holding of abandonment, a proper showing is necessary in order to establish that papers were not received. As set forth in the Official Gazette at 1156 OG 53, the proper showing must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). Applicants have satisfied items (1) and (2) above.

With regard to Item (3), counsel appears to have provided a copy of docket record for this application only. The evidence provided does not exclude the possibility that the "Notification of Missing Requirements" was in fact received by counsel's firm, but inadvertently docketed to the wrong application. The computer docket record relied upon by counsel establishes only that the Notification was not docketed in connection with the present

application, not that such Notification was not received. It is for this reason that the Office generally requires, as the appropriate docket record for establishing nonreceipt of an Office communication, a record of all USPTO responses due on the due date for reply to the communication at issue (i.e., a listing of all replies due in the USPTO on 23 April 2001 for the present case). What is required is a copy of the docket record where the non-received Office action would have been entered had it been received for due date for the reply or 23 April 2001. This docket record was not provided and since applicants did not satisfy item (3) above, the petition under 37 CFR 1.181 is not granted.

DECISION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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